APPENDIX

OPINION OF THE APPELLATE COURT

As stated in *Holmes* v. *Ackley,* 400 Ill. 372, 379, "[t]he granting of the equitable remedy of specific performance is a matter of sound, judicial discretion controlled by established principles of equity and exercised upon a consideration of all the facts and circumstances of the particular case." See also *Fierke* v. *Elgin City Banking Co.,* 366 Ill. 66; and *Holsz* v. *Stephen,* 362 Ill. 527.

In the case before us we have testimony of disinterested witnesses corroborating the evidence of plaintiff herself, and we have believable testimony concerning statements and actions of the decedent. All in all, the evidence furnishes strong proof that the alleged oral contract was actually made and was being performed by plaintiff until decedent made it impossible for her to continue. This evidence convinced the master; it convinced the chancellor; and it convinces us.

Defendant's contention that plaintiff's arrangement with Shannon was at most a partnership is without merit. Plaintiff's use of the term "partnership" in her testimony was not in the legal sense, but rather to show her substantial interest in the rooming house and her expectation from Shannon's promise. The record adequately discloses that plaintiff was induced to work without monetary reward, only because of the promise of some security in the future. Her advancement of a substantial sum of money to Shannon, and her services over a period of years, not only as housekeeper but also as manager of the rooming house were inadequately compensated by room and board. Proper compensation in such a situation is, in fact, difficult to compute. From the inception of Shannon's acquaintance with plaintiff until May 28, 1948,

the date of her departure from the rooming house, Shannon treated plaintiff not as a mere servant, but as an especially fond friend. While their relationship was often turbulent due to the latter's addiction to alcohol, there is no evidence tending to show Shannon's dissatisfaction with plaintiff's performance of the arrangement prior to May 28, 1948. It was only at that time, after Shannon's alcohol habit had rendered plaintiff's further association with him impossible, that he executed another will in which plaintiff was not mentioned, and the property was left to Kelly. We believe the evidence shows this to have been in violation of his oral contract with plaintiff.

A further contention of defendant is that specific performance should not have been decreed because plaintiff had an adequate remedy at law. As we have indicated, we do not consider that the facts and circumstances of this case support such a conclusion. We also believe that the case of *Abrams* v. *Schlar,* 27 Ill. App. 2d 237, relied on by defendant as a basis for this point, is clearly distinguishable.

Defendant also contends that plaintiff's testimony on rebuttal (to which timely objection was made) was inadmissible under Section 2 of the Evidence Act. Ill. Rev. Stat. (1963), ch. 51, § 2. This point is without merit, because by calling plaintiff to testify as an adverse witness, defendant waived her incompetency with respect to the matters concerning which he had examined her. She then became competent to testify on her own behalf in regard to the same "transaction." *Perkins* v. *Brown,* 400 Ill. 490, 496-497.

The decree of the Superior Court of Cook County is affirmed.

AFFIRMED.

DRUCKER, *P.J.*, and MCCORMICK, *J.*, concur.

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of November in the year of our Lord, one thousand nine hundred and sixty-six, within and for the State of Illinois.

Present: RAY I. KLINGBIEL, Chief Justice
Justice WALTER V. SCHAEFER
Justice ROY J. SOLFISBURG, JR.
Justice BYRON O. HOUSE
Justice ROBERT C. UNDERWOOD

WILLIAM G. CLARK, Attorney General
ROBERT G. MILEY, Marshal

Attest: MRS. EARLE BENJAMIN SEARCY, Clerk

Be It Remembered, that, to-wit: on the 30th day of November 1966, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

Emma Chabot, Respondent No. 40159 vs. Timothy D. Kelly, Administrator with the Will annexed of the Estate of George H. Shannon, Deceased, as Legatee and Devisee under the Last Will and Testament of George H. Shannon, Deceased, Petitioner	Petition for Leave to Appeal from Appellate Court First District 50-S-5496 50079

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth

overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioner costs by her in this behalf expended, to be taxed, in due course of administration.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 6th day of December, 1966.

/s/ Mrs. Earle Benjamin Searcy
Clerk,
Supreme Court of the State of Illinois.

(Seal)

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof, do hereby certify the foregoing to be a true copy of order denying petition for leave to appeal in a certain cause entitled in this Court:

Emma Chabot, Respondent No. 40159 vs. Timothy D. Kelly, Administrator with the Will annexed of the Estate of George H. Shannon, Deceased, as Legatee and Devisee under the Last Will and Testament of George H. Shannon, Deceased, Petitioner	Petition for Leave to Appeal from Appellate Court First District 50-S-5496 50079

filed in this office on the 27th day of August A.D. 1966.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 23rd day of February 1967.

/s/ Mrs. Earle Benjamin Searcy
Clerk,
Supreme Court of the State of Illinois.

(Seal)